

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:23-CT-03327-BO

JERRY BARNES,

Plaintiff,

v.

WARDEN D. LEU, OFFICER
SPILLMAN, LIEUTENANT
STERNER, and PA WYCHE,

Defendants.


ORDER

Jerry Barnes (“plaintiff”), a federal inmate, filed this civil rights complaint, pro se, pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) and the Federal Torts Claim Act (“FTCA”). The matter now is before the court on defendants’ motion for summary judgment pursuant to Federal Rule of Civil Procedure 56(a) (DE 29). The matter also is before the court on plaintiff’s motion to voluntarily dismiss this action (DE 37).

An action may be dismissed voluntarily by plaintiff without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment. See Fed. R. Civ. P. 41(a)(1). Otherwise an action shall not be dismissed on the plaintiff’s request except upon an order of the court. See Fed. R. Civ. P. 41(a)(2). At this point in the proceedings, defendants have moved for summary judgment. Accordingly, the complaint may only be voluntarily dismissed pursuant to Rule 41(a)(2), which permits voluntary dismissal “on terms the court considers proper.” A plaintiff’s motion under Rule 41(a)(2) should not be denied absent substantial prejudice to the defendants. S.A. Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986).

The court finds that voluntary dismissal of this action is appropriate, and that the dismissal of this case would not substantially prejudice defendants. Thus, plaintiff's motion for voluntary dismissal pursuant to Rule 41(a)(2) (DE 37) is GRANTED, and this action is DISMISSED without prejudice. Defendants' motion for summary judgment (DE 29) is DENIED as MOOT. The Clerk of Court is DIRECTED to close this case.

SO ORDERED, this the 1 day of October, 2024


TERRENCE W. BOYLE
United States District Judge